



STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

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ENERGY

IN THE MATTER OF THE AMENDED PETITION OF)	<u>SUPPLEMENTAL</u>
ATLANTIC CITY ELECTRIC COMPANY FOR A)	<u>DECISION AND ORDER</u>
DETERMINATION PURSUANT TO THE PROVISIONS)	<u>AS TO THE AMENDED</u>
OF N.J.S.A. 40:55D-19 THAT THE USE OF)	<u>STIPULATION ROUTE IN</u>
CERTAIN LANDS WITHIN THE TOWNSHIP OF)	<u>BARNEGAT TOWNSHIP</u>
EGG HARBOR, TOWNSHIP OF GALLOWAY, AND)	
THE CITY OF PORT REPUBLIC WITHIN THE COUNTY)	
OF ATLANTIC; AND WITHIN THE TOWNSHIP OF BASS)	
RIVER WITHIN THE COUNTY OF BURLINGTON; AND)	
WITHIN THE TOWNSHIP OF LITTLE EGG HARBOR,)	
TOWNSHIP OF EAGLESWOOD, TOWNSHIP OF)	
STAFFORD, TOWNSHIP OF BARNEGAT, TOWNSHIP)	
OF OCEAN, TOWNSHIP OF LACEY WITHIN THE)	
COUNTY OF OCEAN, ALL IN THE STATE OF NEW)	
JERSEY, ARE REASONABLY NECESSARY FOR THE)	
SERVICE, CONVENIENCE OR WELFARE OF THE)	
PUBLIC; AND THAT THE ZONING AND LAND USE)	
ORDINANCES OF THOSE MUNICIPALITIES AND)	
COUNTIES SHALL HAVE NO APPLICATION THERETO)	DOCKET NO. EE02080521

(SERVICE LIST ATTACHED)

BY THE BOARD:¹

Atlantic City Electric Company ("Atlantic Electric", "Company" or "Petitioner") is a corporation of the State of New Jersey, and an electric utility as defined within Title 48 of the New Jersey Statutes and, as such, is subject to the jurisdiction of the New Jersey Board of Public Utilities ("Board"). On August 9, 2002, Atlantic Electric filed a Petition pursuant to N.J.S.A. 40:55D-19 requesting an order that the Zoning, Site Plan Review and all other Municipal Land Use Ordinances or Regulations promulgated under the auspices of Title 40 of the New Jersey Statutes and the Land Use Act of the State of New Jersey, as adopted by the Township of Egg Harbor, the Township of Galloway, the City of Port Republic within the County of Atlantic, and the Township of Bass River within the County of Burlington, and the Township of Little Egg Harbor, the Township of Eagleswood, the Township of Stafford, the Township of Barnegat, the

¹ Commissioner Jack Alter did not participate in the deliberation or the vote on this matter.

Township of Ocean, and the Township of Lacey within the County of Ocean or by any of them, or of the respective counties, all in the State of New Jersey, shall not apply to either the siting of certain transmission line corridors or the construction and operation of a 230,000 volt ("230kV") transmission line all as more specifically described therein and as proposed to be constructed within and through a portion of said municipalities and counties; nor shall such Statute, Ordinances, Rules or Regulations promulgated thereunder be applied to the facilities and structures associated with and appurtenant to said transmission line. The details and findings made as to the majority of the petition's Northern Route can be found in the Board Order issued April 20, 2004.

On April 13, 2004, the Company, Barnegat Township, Ocean Township and the County of Ocean submitted a corrected Stipulation detailing the proposed route of the transmission line along the boundary of Ocean and Barnegat Townships and completing the transmission run. The nature of this corrected Stipulation was as follows:

The revised route begins in Barnegat Township where the route, which is the subject of the Amended Petition, intersects Pancoast Road. The revised route will be in Ocean Township and will be located on the north side of Pancoast Road within a fifty foot wide area that shall consist of the following lands: Respondent, Ocean Township, will convey its rights in and to Pancoast Road (approximately 25 feet) to the Petitioner for \$1.00; Petitioner shall also secure a 25 foot wide easement located on the north side of Pancoast Road. The revised route will continue into Barnegat Township along Pancoast Road, utilizing 25 feet of Pancoast Road and an additional 25 feet of private right-of-way to be secured by the Petitioner and then turn south through private property as well as within the existing Cedar Street right-of-way to West Bay Avenue. Petitioner will acquire such lot, if necessary. The proposed route will then turn east on the north side of West Bay Avenue in Barnegat Township and will be constructed in the existing County right-of-way. The proposed pole heights along West Bay Avenue will be approximately 55 feet. Petitioner and the Respondent, Township of Barnegat, agree that any poles located immediately north of Bay Avenue running north approximately 2,000 feet within Petitioner's existing easement shall remain in place to service only the distribution needs for the Mirage and Pheasant Run development. From that point (approximately 2,000 feet north of Bay Avenue) north to the Barnegat Township boundary line (Pancoast Road), all other poles and transmission facilities will be removed. Petitioner will configure the 230kV phase positions in such a way to minimize electromagnetic field levels, also known as reverse phasing.

Respondent, Township of Barnegat, represented that it supports modifications of the route subject to the Amended Petition south of Bay Avenue running along the south side of Harpoon Drive on private property, the west side of Lighthouse Drive within the public right-of-way and then east to the west side of the Garden State Parkway. These modifications will avoid the need to impact New Jersey Lands Trust Property. Respondent, Township of Barnegat, shall grant an easement to Petitioner for Lot 28, Block 114.55 located on the east side of the Parkway.

The route of the proposed transmission line was demonstrated through a series of detailed maps and drawings, series of aerial photographs depicting the general conditions along the line route and a series of constraint mappings. No party present at the evidentiary hearing indicated an objection or dissatisfaction with the modified route proposed in the Stipulation.

Heritage Point, a participant to this matter, raised objections to this corrected Stipulation and demanded an opportunity to present comments on the matter. In the interest of fairness and

due process, the Board granted this request and withheld decision on the “Barnegat Stipulation” pending an opportunity for comment by Heritage Point.

This opportunity was provided on April 19, 2004, at a public hearing held for the purpose of allowing Heritage Point to provide comments on the corrected Stipulation, and to provide any other party with the opportunity to respond to those comments. An oral format was selected by the Board to allow for the original comments and the reply comments to be presented simultaneously, and to provide Commissioner Butler, who served as the Presiding Commissioner for this hearing, an opportunity to ask questions and seek clarifications as necessary.

The following parties entered appearances at the April 19, 2004 hearing:

John Aleli, Esq. and Enid L. Hyberg, Esq., representing the Company

John Paul Doyle, Esq., representing the Heritage Point Homeowners Association and Heritage Point, L.P.

Elaine A. Kaufmann, Esq., representing the Division of the Ratepayer Advocate

Jerry J. Dasti, Esq., representing the Township of Barnegat

Gregory P. McGuckin, Esq., representing the Township of Ocean

Carl W. Erler, Esq., representing the County of Ocean

Alex Moreau, Deputy Attorney General, representing the Board’s Staff

Heritage Point presented its comments first, and noted that it did not disagree with the need for the line, with the steps taken by the Company, or even to the general objections raised by the municipality. What Heritage Point did object to, however, was the decision of the municipalities to move the line to what Heritage Point refers to as the “surprise route” without providing sufficient notice to Heritage Point. In addition, it is the claim of Heritage Point that this surprise route is less appropriate and in violation of the evidence provided in this matter such that the Board’s adoption of the stipulation would be arbitrary and capricious. Heritage Point presented a number of arguments concerning the number of homes already under contract or occupied, the nature of the surrounding of the development by the transmission line, the inequity in moving the line from an area where the homeowners had knowledge of the line prior to purchasing their homes (the Mirage and Pheasant Run communities) to an area (Heritage Point) where no notice was available, and the general disfavor for what Heritage Point classifies as a “deal” between Ocean Township, Barnegat Township and the Company. Finally, Heritage Point claimed that the Company had failed to present evidence into the record that could support a determination by the Board that the route selected in the corrected Stipulation was necessary for the service, convenience and welfare of the public.

In response, the Company dismissed many of the arguments that Heritage Point raised as being in defense of the public good as instead being a private developer attempting to protect private interests – in this case, property values. Atlantic Electric noted that the testimony presented by the experts for the Company indicated that the original proposed route was a valid and appropriate compromise route, but that there was no such thing as a “perfect” route for the transmission line. Further, Barnegat, through its elected officials, presented and approved the

proposed corrected Stipulation route, taking into account the needs of the municipality. In light of this agreement by the municipality, and in the absence of a perfect line placement, the Company indicated its belief that the corrected Stipulation should be approved and adopted by the Board.

Barnegat Township, in its comment, noted that the process had not allowed for a significant period of discussion and investigation on the part of the municipality in terms of alternatives. Instead, stated Barnegat, the elected officials were left with a difficult choice, and one that would not satisfy all parties. Barnegat's decision to approve the corrected Stipulation route was, according to the Township, a best compromise between bad choices. As such, the Township seeks to have the corrected Stipulation approved by the Board.

The County of Ocean noted that its position was to represent the best interests of the population of the impacted municipalities, and as such, it was in support of the decision of the municipality to advance the corrected Stipulation.

Ocean Township, in its comments, stated that the corrected Stipulation was consistent with the Township's zoning ordinance and master plan such that it sought approval of the stipulated route.

In reply, Heritage Point addressed the comments made by the various parties, noting that Ocean Township had received \$100,000 in conjunction with the corrected Stipulation, that Barnegat Township had placed itself in the position of having to make the difficult choice, and spent the remainder of the time responding to the comments of the Company. Heritage Point alleged that the surprise route consists of an additional 10% of the line, and, extrapolating from the proposed cost of the full line, places a cost of \$4 million on the corrected Stipulation route, which will be borne by the ratepayers. Further, Heritage Point reiterated its belief that the Company had failed to elicit a sufficient evidentiary basis for the Board to adopt the route presented in the corrected Stipulation. Finally, Heritage Point asked to place a number of documents into the record, asked to have its status as a participant upgraded to intervener, and claimed that the Board does not have the authority to make a decision because of the failure of the presentation of a certificate of filing with the Pinelands Commission. Commissioner Butler denied the motion to reclassify Heritage Point as an intervener as the Board had already ratified his previous decision such that modification would require the action of the Board, and, because participant status in this matter forbids the introduction of evidence, the Commissioner denied that application as well.

On April 20, 2004, at the special open agenda meeting set for this matter, the parties indicated the possibility of a third route, nominated as "Route C". This route would run along the eastern side of the Heritage Point development between Pancoast Road and Bay Avenue, and would require Heritage Point to turn over twelve (12) development lots to the Company for the right-of-way. In addition, this route would impact upon approximately ten (10) residences in an existing senior development by placing the transmission wire 100 feet from the legal edge of their property. Nevertheless, and while this route has not yet been solidified, all of the parties have indicated their belief that a firm commitment can be reached on this compromise within the immediate future.

The Board is certainly gratified as to the possible amended Stipulation covering Route C, especially in light of the statements that the parties as well as the residents are reasonably satisfied with the process. The Board must be cognizant, however, of the extremely pressing nature of the need for this transmission line and the possibility that negotiations over the exact

nature of the stipulation could take quite some time. Accordingly, the Board believes that it must act immediately to ensure safe, adequate and proper service now and in the future.

Based upon the foregoing, the Board HEREBY SUPPLEMENTS the Board Order issued April 20, 2004, in Docket No. EE02080521, and HEREBY FINDS that the route proposed in the corrected Stipulation of April 13, 2004, described above and attached as a copy to this Order, is necessary for the service, convenience and welfare of the public. In addition, the Board FURTHER FINDS:

1. That the 230kV transmission line, as proposed, including stipulated modifications, designed, routed and constructed, will minimize any adverse impact upon the environment;

2. That, as to the route described in the corrected Stipulation of April 13, 2004, the proposed 230kV transmission line and its associated facilities and structures to be constructed, as proposed by Petitioner, can be constructed, installed and operated without substantial detriment to the public good, without violating the intent and purpose of the zoning plans and zoning ordinances of the affected municipalities and counties, and without causing undue economic injury to the neighboring property owners;

3. That, as to the route described in the corrected Stipulation of April 13, 2004, there is no reasonable, practicable, permanent and reliable alternative to the construction and routing of the proposed 230kV transmission line currently in place and agreed to by the parties which would have any less adverse impact upon the environment or upon the Zoning and Land Use Ordinances of the affected municipalities or counties.

Therefore, the Board HEREBY DETERMINES, in accordance with N.J.S.A. 40:55D-19, that the 230kV transmission line as proposed by Petitioner, and as described in the corrected Stipulation of April 13, 2004, and its associated facilities, is reasonably necessary for the service, convenience and welfare of the public in order to enable Petitioner to continue to adequately and safely serve its customers; that Petitioner shall be permitted to construct, operate and energize the 230kV transmission line, as proposed, by July, 2005; that the line will be energized and operated at 230kV without further Order from this Board; and that the Local Land Use and Zoning ordinances, and any ordinance, rule or regulation promulgated under the auspices of the Land Use Act of the State of New Jersey by any affected municipality or county, or in furtherance thereof shall not apply to the routing, construction, use and operation of the 230kV transmission lines.

Accordingly, the Board HEREBY ORDERS that, in accordance with N.J.S.A. 40:55D-19 et seq., and with regard to the route described in the corrected Stipulation of April 13, 2004, that no governmental ordinances or regulations, permits or license requirements made under the authority thereof shall apply to the siting, installation, construction or operation of the proposed 230kV transmission line, the transmission line corridors, nor to any of its appurtenant or associated facilities and structures to be constructed; and that Petitioner, as to the route described in the corrected Stipulation of April 13, 2004, shall be permitted to proceed to commence and complete the construction and installation and shall proceed to energize and operate the 230kV transmission line, and all facilities appurtenant thereto, in the manner hereinabove determined by this Board.

The Board FURTHER ORDERS, however, that this Order shall not become final until 5:00 p.m. on Friday, April 23, 2004. The Board FURTHER ORDERS that any party wishing to provide an alternative to the currently approved corrected Stipulation of April 13, 2004, including the Route

C discussed above, shall provide to the Board, no later than 4:00 p.m. on Thursday, April 22, 2004, written documentation including a signed Stipulation that sets forth the proposed route and lists the costs, including costs for mitigation, value of the property to be taken, including itemized improvements, estimated costs as to landscaping and buffer requirements, as well as landscaping details that comply with generally accepted vegetation management rules and requirements. Upon receipt and review, the Board will make any decision regarding modification of this Order prior to it becoming final at a special Board meeting currently scheduled for 12:00 noon on Friday, April 23, 2004.

The Board remains cognizant that the siting of the 230kV transmission line is located within areas governed by the Pinelands Protection Act and the Coastal Area Facilities Review Act. This Order shall not be construed as a certificate, license, consent or permit to construct or disturb any land within the jurisdiction of these areas until Petitioner obtains any approval or authorization to proceed from the Pinelands Commission pursuant to N.J.S.A. 13:18A-1 et seq. and the New Jersey Department of Environmental Protection pursuant to N.J.S.A. 13:19-1 et seq.

DATED: **4/23/04**

BOARD OF PUBLIC UTILITIES
BY:

SIGNED

JEANNE M. FOX
PRESIDENT

SIGNED

FREDERICK F. BUTLER
COMMISSIONER

SIGNED

CAROL J. MURPHY
COMMISSIONER

SIGNED

CONNIE O. HUGHES
COMMISSIONER

ATTEST:

SIGNED

KRISTI IZZO
SECRETARY

**I/M/O the Amended Petition of Atlantic City Electric Company for a Determination
Pursuant to the Provisions of N.J.S.A. 40:55D-19**

BPU DOCKET NO. EE02080521

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